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SNELL & WILMER L.L.P.  
Alan L. Sullivan (3152)  
Todd M. Shaughnessy (6651)  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

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U.S. DISTRICT COURT  
DISTRICT OF UTAH

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler (admitted pro hac vice)  
David R. Marriott (7572)  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
Telephone: (212) 474-1000

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim  
Defendant,

vs.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim  
Plaintiff.

**DEFENDANT/COUNTERCLAIM  
PLAINTIFF IBM'S  
SECOND MOTION TO COMPEL  
DISCOVERY AND CERTIFICATE OF  
COMPLIANCE WITH RULE 37(a)(2)(A)  
OF THE FEDERAL RULES OF CIVIL  
PROCEDURE**

**(ORAL ARGUMENT REQUESTED)**

Civil No. 2:03cv0294

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

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Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Defendant/Counterclaim

Plaintiff International Business Machines Corporation (“IBM”), through counsel, hereby moves this Court for an Order compelling Plaintiff and Counterclaim-Defendant The SCO Group (“SCO”) to (i) respond fully to IBM’s second set of interrogatories, and (ii) to produce categories of documents that SCO has agreed to produce but have not been forthcoming.

As set forth in detail in the memorandum accompanying this motion, SCO’s response to IBM’s second interrogatories is inadequate and incomplete. These interrogatories ask SCO to identify all of the material in Linux to which SCO claims any rights (Interrogatory No. 12), and, with respect to the material identified, whether SCO contends that IBM infringed SCO’s rights and how (Interrogatory No. 13). SCO responds to these interrogatories by (i) raising various groundless objections, and (ii) incorporating by reference its answers to Interrogatory nos. 1, 2 through 4 (which are the subject of IBM’s pending motion to compel). SCO has not provided a meaningful response to these interrogatories and should be compelled to do so. In addition, SCO has failed to produce to IBM important categories of documents that it could have produced months ago.

**CERTIFICATION OF COMPLIANCE WITH RULE 37(a)(2)(A)**

Counsel for IBM has made good faith efforts to obtain complete discovery responses without Court action, but has been unable to do so. As detailed in IBM’s first motion to compel, the parties have exchanged numerous letters and e-mails, and have participated in several phone conferences to resolve various discovery disputes (See IBM’s First Motion to Compel and Certificate of Compliance with Rule 37(a)(2)(A)). Counsel for the parties did not specifically discuss Interrogatory nos. 12 and 13 because, at that time, SCO had not yet answered these

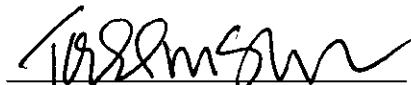
interrogatories. However, the parties discussed at length the deficiencies in SCO's answers to Interrogatory nos. 1 through 9, the very same of deficiencies present in SCO's answers to Interrogatory 12 and 13. Indeed, in responding to IBM's Second Set of Interrogatories, SCO merely incorporates by reference its answers to Interrogatory nos. 1, 2 and 4, which are the subject of IBM's first motion, and the subject of extensive discussion by the parties. With respect to the production of documents, counsel for IBM has requested on several occasions that SCO promptly produce all responsive documents that are ready for production. Although counsel for SCO has agreed to do so, such documents have not been provided, as detailed in IBM's accompanying memorandum.

**REQUEST FOR ORAL ARGUMENT**

IBM also requests oral argument on this motion pursuant to DUCivR 7-1(f), and that it be heard on December 5, 2003, the date currently set for hearing on IBM's pending motion to compel.

DATED this 6th day of November, 2003.

SNELL & WILMER LLP

  
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Alan L. Sullivan  
Todd M. Shaughnessy

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler  
David R. Marriott  
*Attorneys for Defendant International Business  
Machines Corporation*

Of counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION

Donald J. Rosenberg

Alec S. Berman

1133 Westchester Avenue

White Plains, New York 10604

(914) 642-3000

*Attorneys for Defendant/Counterclaim Plaintiff International Business Machines Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7th day of November, 2003, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

